IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1488 OF 2006

Sahebrao Shankar Bhagat ..Petitioner.

Vs

Century Textiles & Industries Ltd. & Ors. .. Respondents.

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Mr. Madhav J. Jamdar for the Petitioner.
Mr. D.H. Mehta for the Respondents.

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CORAM: DR. D.Y. CHANDRACHUD, J.

6th June, 2006.

P.C. :

1. Rule, made returnable forthwith. Counsel appearing for the Respondents waives service. By consent taken up for hearing and final disposal.

2. A decree for eviction was passed against the Petitioner by the Small Causes court on 4th October, 2004. An application for the issuance of a certified copy was made on 6th November, 2004. The certified copy was ready on 9th December, 2004. The Petitioner filed an appeal before the Appellate Bench of the Small Causes Court on 17th January, 2005 and an application was

thereupon filed for condonation of delay. The Appellate Bench declined to condone the delay by the order which is impugned in these proceedings. The Appellate Bench has held that every day's delay is required to be condoned. The application for the issuance of the certified copy was made 28 days after the passing of the decree and according to the Court below that delay was not properly explained. Moreover, a view was also taken on the merits of the case to the effect that the premises were given to the Petitioner during his employment. Consequently, the delay has not been condoned.

3. The application for condonation that was filed on behalf of the Petitioner recited that the Trial Court had granted six months time to vacate the premises. The Petitioner stated that he was under the impression that he had time to file the appeal till the expiry of the period to vacate. However, he was informed by the advocate on 6th November, 2004 that the appeal would have to be filed immediately and accordingly an application for a certified copy was made. The certified copy was ready on 8th December, 2004. The Petitioner's advocate, however, directed the Petitioner to engage another advocate for filing the appeal. The Petitioner has

stated that he is a poor person and his financial condition was weak. Between 18th December, 2004 and 15th January, 2005 he was under medical treatment for a chest ailment and after his recovery he filed the appeal on 17th January, 2005.

4. One of the reasons which weighed with the Appellate Bench was that the Petitioner had not offered any satisfactory explanation as to why the application for a certified copy was filed 28 days after passing of the decree. The Petitioner had a period of 30 days to lodge the appeal. There is merit in the grievance of counsel appearing for the Petitioner that the Appellate Bench was not justified in finding fault with the Petitioner for his failure to explain the period of 28 days that elapsed between the date of the decree and the filing of an application for the issuance of a certified copy. The Petitioner relied upon a medical certificate which showed that between 18th December, 2004 and 15th January, 2005 he was under medical treatment. The Appellate Bench of the Small Causes Court has not discarded the medical record and there is no finding that the medical certificate is not genuine. On the contrary, the Appellate Bench held that apart from the aforesaid period there were other delays and that it was necessary for a

litigant to explain every day's delay. In my view, the approach of the Appellate Bench is flawed. The Supreme Court has repeatedly held that though the reasons set forth in the application for condonation have to be genuine and bonafide, the requirement that delay has to be satisfactorily explained cannot be stretched to unrealistic limits. The Petitioner is a workman who is out of employment. In the Petition it has also been stated in paragraph 7 that his daughter is suffering from Alpastic Anemia, a rare form of disease for which he has been required to incur a considerable amount of expenditure for the last 7 to 8 months. That apart, the Petitioner has also explained as to why some delay has incurred after the passing of the impugned order and until the institution of this Petition.

5. In my view, the ends of justice require that the Petitioner should not be deprived of the remedy of an appeal that is provided against a decree for eviction. The Appellate Bench has made some observations in regard to the merits of the appeal. This would not be the appropriate stage either to comment upon the merits or demerits of the appeal. That would have to be decided only if delay were to be condoned, and at the hearing of the

appeal.

6. In the circumstances, the impugned order of the Appellate Bench is quashed and set aside. The application for condonation of delay filed by the Petitioner shall stand allowed. Parties shall appear before the Appellate Bench for receiving directions on 19th June, 2006. Having regard to the limited nature of the controversy that arises in the appeal, the Appellate Bench of the Small Causes Court is requested to endeavour an expeditious disposal of the appeal preferably on or before 30th September, 2006. The restoration of the appeal shall be conditional on the Petitioner paying all the arrears of rent due and payable at the contractual rate within a period of two weeks from today. The Petitioner shall take all necessary steps for removing the objections in the appeal before the Court of Small Causes on or before 23rd June, 2006. In the event that those objections are not removed within the stipulated period, it would be open to the Small Causes Court to pass necessary orders in accordance with law. The Petition is accordingly disposed of. No order as to costs.